Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Implementation of Section 25	)	
of the Cable Television Consumer	)	
Protection and Competition Act	)	MM Docket No. 93-25
of 1992	)	
	)	
Direct Broadcast Satellite	)	
Public Service Obligations	)	

REPLY COMMENTS OF U S WEST, INC.

In its Comments filed in this proceeding,[1] U S WEST requested that the Federal Communications Commission ("Commission") equalize the public interest burdens placed on Direct Broadcast Satellites ("DBS") providers and make them comparable to those imposed on other multichannel video programming distributors ("MVPD"). U S WEST suggested that this could be accomplished in one of two ways: 1) by removing existing public interest obligations from all MVPDs; or 2) imposing the same public interest obligations on all MVPDs. By doing so, the Commission can ensure that no one MVPD has a competitive advantage over another based solely upon the imposition of disparate public interest obligations.

[1] Comments of U S WEST, Inc. ("U S WEST") filed Apr. 28, 1997. And see In the Matter of Implementation of Section 25 of the Cable Television Consumer Protection and Competition Act of 1992, Direct Broadcast Satellite Public Service Obligations, Notice of Proposed Rule Making, 8 FCC Rcd. 1589 (1993) ("NPRM"); Public Notice, Comments Sought in DBS Public Interest Rulemaking, 12 FCC Rcd. 2251 (1997); Order extending filing date for comments, DA 97-602, rel. Mar. 21, 1997.

In these Reply Comments, U S WEST focuses on two areas in response to the numerous comments filed in this proceeding. First, existing public interest programming should not count towards the 7% obligation of DBS providers. Only an incremental amount of additional public interest benefit results from DBS providers using existing programming to fulfill their obligations. By requiring DBS providers to develop new educational and non-commercial programming, the Commission will provide the public with the significant benefits envisioned by Congress with the passage of Section 335. And second, as it did in the Open Video Systems ("OVS") proceeding,[2] the Commission must provide a level playing field for all MVPDs. The video programming marketplace can only flourish in an environment where all providers compete on an equal basis.

I. DBS PROVIDERS SHOULD NOT BE ALLOWED TO COUNT EXISTING NON-COMMERCIAL OR EDUCATIONAL PROGRAMMING TOWARDS THEIR 7% PUBLIC INTEREST PROGRAMMING OBLIGATION

The Commission must not allow DBS providers to count existing programming towards their 7% minimum requirement. Various DBS providers have suggested alternatives in which no new public interest programming, or only a minimal amount, is actually provided. For example, under one proposal, a DBS provider would be allowed to meet one-third of its public interest programming set-aside requirement with affiliated programming, one-quarter with political programming,

[2] See In the Matter of Implementation of Section 302 of the Telecommunications Act of 1996, Open Video Systems, CS Docket No. 96-46, Report and Order and Notice of Proposed Rulemaking, 11 FCC Rcd. 14639 (1996); Second Report and Order, 11 FCC Rcd. 18223 (1996); First Order on Reconsideration, 3 Comm. Reg. 1018 (1996); Third Report and Order and Second Order on Reconsideration, 4 Comm. Reg. (P&F) 380 (1996); Fourth Report and Order, FCC 97-130, rel. Apr. 15, 1997.

and one-half of the remaining set-aside with existing programming.[3] This would only leave approximately one-sixth of the set-aside for new, independently produced public interest programming. Such a result should be unacceptable to the Commission.

A true expansion of available public interest programming can only occur if DBS providers are compelled to add new, unaffiliated non-commercial and educational programming. The use of such channels as C-SPAN, the Learning Channel, or Discovery should not be counted towards a DBS provider's public interest obligations any more than a cable operator can count them against its Public, Education and Government ("PEG") obligations.[4] For these obligations to add a significant new public benefit, and not simply be incremental, the universe of good, creative public interest programming must be expanded, not simply duplicated. Furthermore, as raised by the Association of America's Public Television Stations and the Public Broadcasting Service ("AATPS and PBS"), DBS providers should not be allowed to count programming produced by their affiliates towards the set-aside.[5] Such leeway would potentially provide DBS operators with the opportunity to evade

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[3] See, e.g., Comments of American Sky Broadcasting LLC ("ASkyB"), filed Apr. 28, 1997 at 19-22.

[4] Contrary to the Media Access Project's assertion that CSPAN has been the mistreated stepchild of the cable industry, CSPAN has always enjoyed broad support and carriage by MediaOne systems. CSPAN1 is available to 97% of MediaOne subscribers and CSPAN2 is currently available to 77%. In fact, CSPAN would not exist today but for the initial vision and continued support of the cable industry. As MediaOne system rebuilds are completed, CSPAN2 carriage will also approach 100%.

[5] AATPS and PBS at 18.

the intent of Congress in enacting Section 335, to reserve the capacity designated therein for bona fide non-commercial and educational programming.

Additionally, DBS providers should not be able to meet their set-aside requirements on a piecemeal basis. Discrete channels must be provided for the public interest obligations in Section 335 to be meaningful.

II. THE COMMISSION MUST USE THIS OPPORTUNITY TO LEVEL THE PLAYING FIELD AMONGST COMPETING MVPDS

As demonstrated succinctly by the SCBA in the matrix included in its comments,[6] competitive parity simply does not exist in the MVPD marketplace today. The financial impact of the obligations imposed on the various providers in the video programming distribution industry is grossly disparate and is not conducive toward the creation of a truly competitive market. The Commission has previously recognized the importance of equal treatment in its proceedings implementing OVS. Similar to DBS, OVS provides a competitive delivery system for multichannel video programming. Unlike DBS, however, OVS providers are subject to the majority of public interest obligations imposed on cable operators. These obligations include must-carry, PEG access, payments in lieu of franchise fees, program access, sports blackout, network non-duplication and syndicated exclusivity rules. To provide parity in the marketplace, similar obligations must be imposed on DBS providers or, in the alternative, such obligations must be removed from cable and OVS operators allowing for free and open competition.

[6] SCBA at 28.

The Commission can best use its authority established by Section 335 to level the playing field for all MVPDs. Cable and OVS providers should not be required to shoulder a financial burden significantly higher than other providers. While individual disparities may appear to have a minimal financial impact, added together, such obligations represent an enormous economic and pricing disadvantage to cable operators. Franchise fees alone provide a perceptible pricing advantage to DBS and other wireless providers. Additionally, PEG support payments, institutional networks ("INET"), and other franchise obligations can add over 5 to 10% to a subscriber's bill. DBS providers also enjoy federal exemption from local sales and property taxes. Going forward, such disparity will cause significant competitive harm to cable and OVS providers.

As U S WEST and other commenters noted previously, the DBS industry has developed into a viable competitor for the delivery of video programming in the United States. It is no longer the nascent industry perceived by Congress when it passed the 1992 Cable Act. Neither is it a poorly funded new entrant which requires substantial economic preference by the Commission. As such, DBS providers should be treated the same as all other providers in the industry and should compete on true marketplace factors such as price and service quality. No preferential treatment is warranted and none should be provided. In order for fair competition to thrive, the time has come to ensure regulatory parity in the marketplace.

III. CONCLUSION

Based on the foregoing, U S WEST asks that the Commission move quickly to establish competitive parity in the video distribution marketplace by imposing equal public interest obligations on DBS providers or, where appropriate, removing these obligations from other MVPDs.

Respectfully submitted,

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May 30, 1997

CERTIFICATE OF SERVICE

I, Rebecca Ward, do hereby certify that on this 30th day of May, 1997, I have caused a copy of the foregoing **REPLY COMMENTS OF U S WEST, INC.** to be served via first-class U.S. Mail, postage-prepaid, upon the persons listed on the attached service list.

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Rebecca Ward

***Via Hand-Delivery**

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